

## AlaFile E-Notice

03-CV-2019-900283.00

To: SIBLEY STEVEN SHAWN  
ssibley@adem.alabama.gov

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

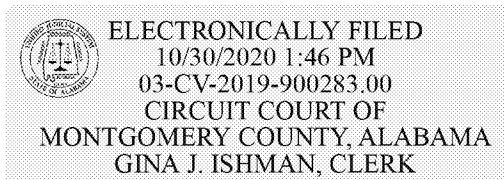
Ex. 6 Personal Privacy (PP) V. LANCE R. LEFLEUR, DIR., ADEM ET AL  
03-CV-2019-900283.00

The following discovery was FILED on 10/30/2020 1:48:28 PM

Notice Date: 10/30/2020 1:48:28 PM

GINA J. ISHMAN  
CIRCUIT COURT CLERK  
MONTGOMERY COUNTY, ALABAMA  
251 S. LAWRENCE STREET  
MONTGOMERY, AL, 36104

334-832-1260



**IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA**

**Ex. 6 Personal Privacy (PP)**

Plaintiffs,

v.

Civil Action No.  
03-CV-2019-900283.00

**LANCE R. LeFLEUR**, in his official  
capacity as Director of the Alabama  
Department of Environmental  
Management; and **MARILYN G.  
ELLIOTT**, in her official capacity as  
Deputy Director and Nondiscrimination  
Coordinator of the Alabama Department  
of Environmental Management,

Defendants.

**NOTICE OF SERVICE OF DISCOVERY DOCUMENT**

Plaintiffs hereby give notice of service of the following discovery document on  
Defendants on October 30, 2020:

**PLAINTIFFS' THIRD REQUEST FOR ADMISSIONS TO  
DEFENDANTS LANCE R. LEFLEUR AND MARILYN G. ELLIOTT**

Respectfully submitted,

*s/ David A. Ludder*

DAVID A. LUDDER (LUD001)

Attorney for Plaintiffs

Law Office of David A. Ludder, PLLC

9150 McDougal Court

Tallahassee, Florida 32312-4208

Tel (850) 386-5671 Fax (203) 306-4110

DavidALudder@enviro-lawyer.com

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Notice of Service of Discovery Document was electronically filed with the Clerk of Court using the AlaFile system which will send notification of such filing to the following persons:

S. Shawn Sibley  
Paul Christian Sasser, Jr.  
Assistant Attorneys General and Associates General Counsel  
Alabama Department of Environmental Management  
Office of General Counsel  
P.O. Box 301463  
Montgomery, Alabama 36130-1463  
ssibley@adem.alabama.gov  
pcsasser@adem.alabama.gov

Done this 30th day of October, 2020.

*s/ David A. Ludder*

David A. Ludder

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

**Ex. 6 Personal Privacy (PP)**

Plaintiffs,

v.

Civil Action No.  
03-CV-2019-900283.00

**LANCE R. LeFLEUR**, in his  
official capacity as Director  
of the Alabama Department of  
Environmental Management, and  
**MARILYN G. ELLIOTT**, in her  
official capacity as Deputy  
Director and Nondiscrimination  
Coordinator of the Alabama  
Department of Environmental  
Management,

Defendants.

\_\_\_\_\_/

**PLAINTIFFS' THIRD REQUEST  
FOR ADMISSIONS TO DEFENDANTS  
LANCE R. LEFLEUR AND MARILYN G. ELLIOTT**

Plaintiffs request that Defendants Lance R. LeFleur and Marilyn G. Elliott, separately or jointly, admit the genuineness of the following documents and admit the following facts within 30 days after service of this request. [Please note that the answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested

admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder.]

1. That Exhibit "A" attached hereto is a genuine copy of ADEM's *Guide for Citizen Participation* as revised in March 2014.

2. That the ADEM Civil Rights and Environmental Justice Complaint Reporting and Investigating Process described in Appendix III of ADEM's *Guide for Citizen Participation* as revised in March 2014 is based on the terms of ADEM's *Memorandum #108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints* (dated October 18, 2004).

3. That Exhibit "B" attached hereto is a genuine copy of Lance R. LeFleur's August 10, 2018 memorandum to Marilyn Elliott regarding interim Title VI Grievance Investigation Procedures.

4. That Lance R. LeFleur provided instructions to Marilyn G. Elliott previous to August 10, 2018 regarding the processing of complaints alleging discrimination by ADEM on the basis of race, color, national origin, disability, age

or sex on an interim basis beginning June 5, 2018 which were consistent with the instructions in Exhibit "B" attached hereto.

5. That Lance R. LeFleur provided instructions to Marilyn G. Elliott on or before June 5, 2018 regarding the processing of complaints alleging discrimination by ADEM on the basis of race, color, national origin, disability, age or sex on an interim basis beginning June 5, 2018 which were consistent with the instructions in Exhibit "B" attached hereto.

6. That Exhibit "C" attached hereto is a genuine copy of Shawn S. Sibly's October 4, 2018 electronic mail message to Betsy Biffel regarding Discrimination Grievance Procedure - Redline Draft.

7. That the proposed redline changes in the draft memorandum from Lance R. LeFleur to Marilyn G. Elliott attached to Exhibit "C" were added by Shawn S. Sibley.

8. That Exhibit "D" attached hereto is a genuine copy of Shawn S. Sibly's November 1, 2018 electronic mail message to Betsy Biffel regarding Updated and Translated Discrimination Procedures.

9. That the substance of *Memorandum #108: Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints* (dated October 18, 2004) was published on ADEM's website in April of 2016 pursuant to ECRCO's (EPA's External Civil Rights Compliance Office's) suggestion.

10. That Exhibit "E" attached hereto is a genuine copy of ADEM's *Guide for Citizen Participation* as revised in November 2018.

11. That the ADEM Nondiscrimination Grievance Investigation Procedures described in Appendix III of ADEM's *Guide for Citizen Participation* as revised in November 2018 are based on the terms of ADEM's November 5, 2018 *Nondiscrimination Grievance Investigation Procedures* (dated November 5, 2018).

12. That Exhibit "F" attached hereto is a genuine copy of the *Nondiscrimination Statement* published by ADEM on its website.

13. That ADEM's *Nondiscrimination Statement* reflects ADEM's policy not to discriminate on the basis of race, color, national origin, sex, religion, age or disability in



the administration of its programs or activities, in accordance with applicable laws and regulations.

14. That ADEM's *Nondiscrimination Statement* was published in response to the requirement of 40 C.F.R. § 7.95.

15. That a complaint alleging that ADEM has violated 40 C.F.R. §§ 7.30 or 7.35 is "within the jurisdiction of" 40 C.F.R. Part 7 for purposes of ADEM's *Nondiscrimination Grievance Investigation Procedures* (dated November 5, 2018).

16. That the *Nondiscrimination Grievance Investigation Procedures* (dated November 5, 2018) are a means of ensuring compliance with the policy expressed in ADEM's *Nondiscrimination Statement*.

Respectfully submitted,

s/ David A. Ludder  
Attorney for Plaintiffs (LUD001)  
Law Office of David A. Ludder, PLLC  
9150 McDougal Ct.  
Tallahassee, Florida 32312-4208  
Tel (850) 386-5671  
Email davidaludder@enviro-lawyer.com

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Plaintiffs' Third Request for Admissions to Defendants Lance R. LeFleur and Marilyn G. Elliott was electronically filed with the Clerk of Court using the AlaFile system which will send notification of such filing to the following persons:

S. Shawn Sibley  
Paul Christian Sasser, Jr.  
Assistant Attorneys General and Associates General Counsel  
Alabama Department of Environmental Management  
Office of General Counsel  
P.O. Box 301463  
Montgomery, Alabama 36130-1463  
ssibley@adem.alabama.gov  
pcsasser@adem.alabama.gov

Done this 30th day of October, 2020.

s/ David A. Ludder  
David A. Ludder

**From:** Sibley, Shawn S [<mailto:ssibley@adem.alabama.gov>]  
**Sent:** Thursday, October 4, 2018 2:11 PM  
**To:** Biffl, Betsy <[Biffl.Betsy@epa.gov](mailto:Biffl.Betsy@epa.gov)>  
**Subject:** Discrimination Investigation Procedure - Redline Draft



Betsy,

Based on our recent conversations and pursuant to your client's request for publication, please find attached a redlined version of our Discrimination Investigation Procedure. Please let me know if this is consistent your client's recommendations or if there are any additional suggestions. When your client completes its review, we'll have our contractor interpret it and provide those versions to you and your client for review. Please feel free to call me if you need to discuss or have any questions.

Thank you, - Shawn

S. Shawn Sibley  
Office of General Counsel  
Alabama Department of Environmental Management  
Post Office Box 301463  
Montgomery, Alabama 36130-1463  
(334) 260-4544 (Phone/Fax)  
[ssibley@adem.alabama.gov](mailto:ssibley@adem.alabama.gov)



This electronic message transmission contains information from the Office of General Counsel for the Alabama Department of Environmental Management which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited. If you have received this transmission in error, please notify us by telephone (334) 271-7855 or by electronic mail immediately.

DATE: October , 2018

Deleted: August 10, 2018

TO: Marilyn Elliot, Deputy Director  
ADEM Nondiscrimination Coordinator

FROM: Lance R. LeFleur, Director

RE: Title VI Grievance Investigation Procedures

The Nondiscrimination Coordinator will process complaints alleging discrimination by the Alabama Department of Environmental Management (ADEM) on the basis of race, color, national origin, disability, age, sex, or retaliation based on a pending discrimination complaint, as follows:

Deleted: This will document my previous instructions to you that, beginning June 5, 2018, on an interim basis until a final procedure is established for addressing discrimination complaints, t

(1) Complaints alleging discrimination by ADEM will be forwarded to ADEM's Nondiscrimination Coordinator in Montgomery.

Deleted: or s

Deleted: ,

(2) In cases where the complainant is unable or incapable of providing a written statement, a verbal complaint of discrimination will be forwarded to the Nondiscrimination Coordinator at (334) 271-7710. The complainant will be interviewed by an ADEM employee who, if necessary, will assist the person in converting verbal complaints to writing.

(3) All complaints alleging discrimination by ADEM shall be reviewed for the following information:

- a. the specific action(s) by ADEM that allegedly discriminate or result in discrimination in violation of 40 C.F.R. Parts 5 and 7.
- b. the specific impact that allegedly has occurred or will occur as the results of such action(s); and
- c. the identity of the parties subjected to, impacted by, or potentially impacted by the alleged discrimination.

(4) Within ten working days of receipt of the complaint, ADEM will provide the complainant or his/her representative with a written acknowledgement of receipt and notice of how the complaint will be investigated. ADEM will also notify complainants that their complaint may also be filed with the U.S. EPA, External Civil Rights Compliance Office, 1200 Pennsylvania Avenue, N.W., Mail Code 1201A, Washington, DC 20460-1000 in accordance with 40 C.F.R. Parts 5 and 7.

(5) The Nondiscrimination Coordinator, based on the information in the complaint and any additional information provided by the complainant, will determine if the matters alleged are within the jurisdiction of 40 C.F.R. Parts 5 and 7, and whether the complaint has sufficient merit to warrant an investigation. These determinations will be made within fifteen working days after the receipt of the complaint by

ADEM. A complaint will be regarded as meriting investigation unless:

- a. It clearly appears on its face to be frivolous or trivial;
- b. Within the time allotted for making the determination of jurisdiction and investigative merit, ADEM voluntarily concedes noncompliance and agrees to take appropriate remedial action or reaches an informal resolution with the complainant; or
- c. Within the time allotted for making the determination of jurisdiction and investigative merit, the complainant withdraws the complaint.

(6) If the Nondiscrimination Coordinator accepts the complaint, the Coordinator will designate an individual to investigate the allegation(s). After examining all of the information in light of the requirements of 40 C.F.R. Parts 5 and 7, the investigator will draft a report with findings and recommendations.

(7) In the event that the complainant has not submitted sufficient information to make a determination of jurisdiction or investigative merit, ADEM may request additional information. This request shall be made within fifteen working days of the receipt of the complaint by ADEM. The complainant is under no obligation to provide any requested information.

(8) In the case of complaints involving third party entities; e.g. a sub-recipient, permit applicant or permittee, ADEM will notify the third party entity that the complaint has been received no later than the time of the written notice provided to a complainant that the complaint is complete. At such time, ADEM will ask the third party entity to provide information necessary for ADEM to investigate the complaint. ADEM will use the information provided by the third party entity and the complainant in resolving the complaint.

(9) Within 120 days of accepting the complaint, the Office of the Director will respond in writing to the complainant approving or disapproving the findings and recommendations made in the investigative report, based upon a preponderance of the evidence. ADEM will implement the recommendations approved by the Office of the Director.

(10) ADEM employees shall not retaliate, intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege granted under 40 C.F.R. Parts 5 and 7, or because an individual has filed a complaint or has testified, assisted, or participated in any way in an investigation, or has opposed any practice made unlawful under 40 C.F.R. Parts 5 and 7.

BY AND THROUGH THIS DELEGATION OF RESPONSIBILITIES TO THE ADEM NONDISCRIMINATION COORDINATOR, THE ABOVE PROCEDURES ARE HEREBY ADOPTED TO ASSURE THE PROMPT AND FAIR RESOLUTION OF COMPLAINTS WHICH ALLEGE UNLAWFUL DISCRIMINATION UNDER TITLE VI AND 40 C.F.R. PART 7.

**Deleted: ¶**  
 THIS INTERIM PROCEDURE MAY BE AMENDED FROM TIME  
 TO TIME BEFORE A FINAL PROCEDURE IS ADOPTED ¶  
 ¶

Lance R. LeFleur, Director